In the High Court of Uttaranchal, at Nainital.
A.O. No. 706/2001
(FAFO No. 304/1987)

Union of India through
the Surveyor General of India,
Hathi Barkala, Dehradun ....Appellant.

Vs.

1- Yash Pal Singh Chauhan S/o Kartar Singh,
R/o 5-A, Raja's Road, Dehradun.
2- Umed Singh S/o Kunwar Singh,
Driver, Survey of India,
Dehradun ...Respondents.

Hon'ble B.C. Kandpal, J:

This A.O., U/S 110-D of the Motor Vehicles Act, has been preferred against the judgment and award dated 20-12-1985, passed by additional District Judge/M.A.C.T., Dehradun in MACP No. 197 / 1983, Yashpal Singh Chauhan Vs. Umed Singh and another, thereby awarding compensation of Rs.25,000/- alongwith an interest @ 6% per annum from the date of the petition till the date of payment.

2- Brief facts of the case are that on 28-12-1983 at about 12.30P.M. Yash Pal Singh Chauhan was going on his motorcycle bearing registration No. UTL 6304 and when he reached at the crossing of Lytton Road, East Canal Road, Eucallyptus Road and Old Survey Road, Mini Bus No. UTL 4234 came there from E.C. Road side without blowing horn. The bus was being driven rashly and negligently at a fast speed. The claimant tried to avoid the accident by applying brakes and turning the motorcycle to its left and came to the extreme left side of the road at the corner between Lytton Road and eucalyptus Road. The driver of the

Mini Bus could not control his vehicle and hit the claimant with the result that the claimant and the pillion rider both fell on the ground. The motorcycle was damaged and the claimant suffered several injuries and fracture of right leg. He was brought to Doon Hospital, Dehradun where he remained admitted from 28-5-1983 to 7-6-1983. Thereafter the injured was shifted to Nursing Home of Dr. Sudhir Gupta, Orthopaedic Surgeon., where he was treated from 7-6-1983 onwards. His leg remained in plaster for a long period and he could not attend his profession of a practicing lawyer. The claimant claimed Rs. 9351.55 as special damages on account of medical expenses and loss of practice and Rs. 20,000/- as general damages.

3- The respondents contested the claim petition and filed written statement. The accident and sustaining injuries by the claimant have not been disputed by the respondents. It was alleged by the respondents that the Mini Bus was being driven very cautiously and slowly and horn was blown while entering the crossing, but the motor-cyclist could not stop due to fast speed and the pillion rider jumped of the seat disbalancing the motorcycle as a result the motorcycle hit the Mini Bus and thereafter slipped in rubble and fell in front of the Mini Bus in fron left side wheel. Since the Mini Bus had already stopped it did not run over the motorcycle. In the collision no damage was caused to the motorcuycle except that its right left side footrest was broken. It was also pleaded that amount of compensation claimed by the claimant is highly exorbitant.

4- On the basis of pleadings of parties, the following issues were framed by the Tribunal for consideration:-

1- Whether an accident took place on 28-5-83 at about 12.30 P.M. by Mini Bus No. UTL 4234 in which the claimant was injured?.
2- Whether accident took-place due to rash and negligent driving of the driver of Mini Bus No. UTL 4234?.
3- To what amount of compensation, against whom, the claimant is entitled?.

5- After framing issues by the Tribunal, parties adduced evidence in support of their case. The Tribunal after perusing the evidence on record and hearing the learned counsel for the parties, decreed the claim petition of a sum of Rs.25,000/- against the respondents along with interest @ 6% per annum from the date of petition till the date of payment with cost. It was also directed that the sum of Rs. 7500/- awarded U/S 92-A of the Motor Vehicle Act to the claimant, shall be adjusted in the aforesaid amount.

6- Feeling aggrieved, the Union of India has preferred appeal before the Allahabad High Court which was transferred to this court after creation of new State.

7. After receipt of the record notices were issued to the respondents. None has appeared on behalf of the respondents. I have heard Sri Deepak Rawat, learned Standing Counsel for the Union of India and perused the record.

8. The learned Standing Counsel appearing on behalf of the appellant has argued that at the time of the accident the driver of Mini Bus involved in the

accident was driving the bus on a moderate speed and the accident had occurred due to the negligence of the motorcyclist and the learned Tribunal has recorded wrong finding holding that the accident took place due to rash and negligent driving by the driver of Mini Bus.

9- Undisputedly the present accident is not face-to-face collision. The case set up by the claimant in the claim petition is that at the crossing of the accident he was turning the motorcycle at Beni Bazar Chowk crossing and Mini Bus No. UTL 4234 came from East Canal Road side without blowing any horn rashly and negligently. He tried to avoid the accident by turning the motorcycle towards left and came on the extreme left side of the road but the driver of the Mini Bus could not control his vehicle and hit the claimant and in this way the accident occurred. In support of his version the claimant examined himself as P.W.1 and Pramod, who was pillion rider in the motorcycle at the time of the accident, as P.W.3. Both these witnesses have supported the version of the claimant and deposed that at the place of the accident the Mini Bus came there at a high speed, no horn was blown by the driver of the bus and the motorcyclist looking to the bus, turned his motorcycle extreme to the left side, but the bus hit Yash Pal Singh on his right leg. On the other hand the respondents produced the driver of the offending bus Umed Singh D.W.1 and Satya Pal Bhola Cashier of Survey of India, who was in the vehicle at the time of accident. The statements of both these witnesses show that they were not consistent with each other in telling about the width of the roads and about the distance from which the motorcycle was seen by the driver of Mini Bus while

entering the cross from the E.C. Road. Their case is that when the driver of Mini Bus saw the motor cycle coming there from 100 paces, he had stopped the bus. It is highly improbable that the Mini Bus which has already entered the crossing would be stopped to let the motorcycle pass while it is about 100 paces away on the left side of the road. The learned Tribunal has dealt with the matter in detail and righly found the depositions of defence witnesses as unreliable. Another circumstance in the case is that the driver of the mini bus was convicted in the criminal case arising out this accident on the charges of rash and negligent driving. I find that there is no substance in the submission raised by the learned Standing Counsel on behalf of the appellant and the finding recorded by the Tribunal in this regard need no interference.

10- The learned Standing Counsel next submitted that the compensation awarded to the claimant is highly excessive. The Tribunal awarded Rs.25,000/- towards compensation. The claimant claimed Rs. 9,351-55 P. towards special damages on account of loss of practice and medical expenses. The claimant is a legal practitioner. He remained admitted in the Doon Hospital 28.5.1983 to 7.6.1983 and thereafter in the Nursing Home of Dr. Sudhir Gupta from 7.6.83 onwards. Certainly there was loss of profession of the claimant. The claimant also filed cash memos of purchase of medicines amounting to Rs. 1551-55 P. towards expenses on medical treatment the Tribunal awarded Rs. 2000/- in this head, which appears to be just and proper. It is also noteworthy that the claimant remained in plaster for his fracture of the right leg and he would have

suffered pain and agony due to the injuries sustained by him in the accident and looking to the loss of profession, pain and agony and medical expenses, the total amount of Rs. 25000/- awarded by the tribunal did not appear to be excessive and in my opinion the compensation awarded to the claimant is just and proper. The Tribunal also awarded interest @6% per annum from the date of petition till the date of payment, which in my opinion, require no interference by this court.

11- No other point is pressed by the learned Standing Counsel.

12- In view of above, the appeal lacks merit and is liable to be dismissed.

13- Accordingly the appeal is dismissed. The impugned judgment award of the learned Tribunal is affirmed. No order as to costs.

(B.C. Kandpal, J.)

Dated: 10-10-2006
ISB